IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12725 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHBHAICHHAGANBHAI DHODIYA PATEL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 24/09/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 16.4.2003 passed by the District Magistrate, Navsari, against him, in exercise of powers under Section 3(2) of the Gujarat

Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 16.4.2003.

2. The grounds served upon the petitioner discloses that the detaining authority relied upon two offences registered against the petitioner on 25.4.2002 and 31.12.2002 under Sections 65(a)(e), 66(1)(b), 81 and 116(1)(b) of the Bombay Prohibition Act. The detaining authority also took into consideration in-camera statements of two witnesses recorded on 17.3.2003 and 21.3.2002 by the proposing authority and verified by the detaining authority on 8.4.2003. From the above material, the order impugned in this Special Civil Application came to be passed by the detaining authority against the petitioner.

3. Learned Advocate Mrs.S.G.Patel for the petitioner and learned AGP Mr. R.M.Chauhan for the respondents were heard at length. Learned AGP has placed on record the affidavit-in-reply of the detaining authority which is also taken into consideration.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be dealt with and disposed of on the ground of delay in passing the order impugned in this Special Civil Application. The dates, material for consideration are, the dates on which two offences came to be registered i.e. on 25.7.2002 and 31.12.2002. Thereafter, the detaining authority has referred two unreported incidents occurred on 28.2.2003 and 15.3.2002 but the statements in respect of unreported incidents came to be recorded by the proposing authority only on 21.3.2003 and on 17.3.2003. When the proposal was made to the detaining authority, the statements came to be verified on 8.4.2003 and the order came to be passed on 16.4.2003. So, even if the last offence, which is unreported, is taken into consideration of 15.3.2003 and the statements of 21.3.2003, then also, the order passed on 16.4.2003 is belated order. If the material is viewed from the another angle that the statements were verified on 8.4.2003, the order could be passed on 16.4.2003 by the detaining authority, this delay of 8 days is not explained. In this view of the matter, the order impugned in this Special Civil Application is required to be quashed and set aside on the ground of delay caused in passing the impugned order.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Navsari, on 16.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair